

Appl. No. 10/765,423
Atty. Docket No. 9150
Amdt. dated June 12, 2006
Reply to Office Action of March 10, 2006
Customer No. 27752

REMARKS

Status of the Claims

Claims 1 and 3-20 are pending in the present application. Claims 1, 17 and 18 have been amended to recite a cationic polymer. Support for these amendments may be found at page 14, lines 27 and 28 of the written description. Claims 3-6 have been amended to depend from Claim 1. Claim 20 has been amended to depend from Claim 1. Claim 2 has been canceled for reasons unrelated to patentability. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. § 112, second paragraph

Claim 20 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Office Action asserts that there is insufficient antecedent basis for the limitation of Claim 20, which recites, "said personal cleansing compositions".

The Office Action correctly assumes that Claim 20 is intended to depend from Claim 1. Accordingly, Applicants have amended Claim 20 to depend from Claim 1. Therefore, Applicants submit that the present rejection has been obviated and request that it be withdrawn.

Rejection Under 35 U.S.C. § 102(b) Over U.S. Patent No. 5,853,711 to Nakamura et al.

Claims 1, 9, 11-14, and 17-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,853,711 to Nakamura et al. ("Nakamura"). The Office Action asserts that Nakamura teaches a conditioning agent, surfactant, spherical particles, and irregular particles. Therefore, the Office Action concludes that Applicants' claimed invention is anticipated by Nakamura. Applicants respectfully traverse the present rejection based on the following comments.

As currently amended, Applicants' Claims 1, 17 and 18 recite, *inter alia*, a personal cleansing composition comprising a cationic polymer.

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Nakamura fails to teach or suggest a cationic polymer in any of its compositions. Cationic polymers aid in deposition of solid particle components and enhance conditioning performance. *See page 14, lines 27 and 28 of the written description.*

Nakamura fails to teach each and every element of Applicants' claimed invention. Therefore, Claims 1, 9, 11-14 and 17-20 are novel over Nakamura.

Rejection Under 35 U.S.C. § 103(a) Over U.S. Patent No. 5,534,265 to Fowler et al.

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,534,265 to Fowler et al. ("Fowler"). The Office Action asserts that Fowler teaches a non-abrasive personal cleansing aqueous gel composition comprising (a) from about 0.1% to about 20% of insoluble particles, (b) from about 0.05% to about 10% of a water soluble or dispersible gelling agent, and (c) from about 20% to about 99.85% water. The Office Action admits that Fowler does not teach a composition comprising irregularly shaped and spherical particles having a weight ratio and median sizes as recited by Applicants. However, the Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared personal care compositions comprising a mixture of irregularly shaped particles and spherical particles in their optimum proportions because Fowler teaches that particles having a wide range of shapes can be utilized. Applicants traverse the present rejection based on the following comments.

To rely on a rejection under 35 U.S.C. § 103(a), the prior art must be analogous. The Office Action asserts that Fowler teaches that particles having a wide range of shapes may be utilized in its personal care compositions. However, the compositions of Fowler are directed to non-abrasive personal care compositions. Specifically, Fowler teaches that one of its objectives is to provide non-abrasive personal cleansing compositions useful for cleansing the skin and hair. Another of its objectives is to provide personal cleansing compositions in the form of an aqueous gel which uses insoluble micronized particles such that the compositions have good cleansing ability without irritating or abrading the skin. The final objective mentioned by Fowler is to provide a method for cleansing the skin or hair. *See Fowler* at column 2, lines 11-21.

Applicants submit that Fowler accurately teaches that many various shapes of particles may be appropriate to formulate the cleansing compositions of Fowler.

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However, the particles taught by Fowler are taught only in terms of non-abrasion and improved cleansing.

In contrast, the compositions of Applicants' claimed invention are capable of containing and effectively depositing and retaining solid particle benefit agents on the treated surface to deliver improved hair volume, body, and fullness while simultaneously delivering improved wet conditioning and combing performance. *See the written description* at page 2, lines 23-26. While many various shapes may be appropriate for the cleansing compositions of Fowler, Applicants have made the surprising discovery that using spherical and irregular particles, wherein the median particle size of said spherical particle is greater than the median particle size of said irregularly shaped particle, volume, body and fullness with improved wet conditioning and combing performance may be achieved. This combination is not taught or suggested by Fowler, nor does Fowler address the problems of achieving improved volume, body, fullness or delivering improved wet conditioning and combing performance. One of ordinary skill in the art would not be motivated to formulate the compositions of Applicants' claimed invention because Fowler does not address analogous problem. Furthermore, there is no teaching or suggestion in Fowler that the specific use of the combination of spherical and irregular particles provides any specific benefit whatsoever. Therefore, Fowler provides no motivation to formulate compositions having, specifically, spherical and irregular particles, to provide any benefit.

Fowler does not teach or suggest each and every limitation of Applicants' claimed invention. Therefore, Claims 1 and 3-20 are not rendered *prima facie* obvious over Fowler.

CONCLUSION

In light of the remarks and amendments presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

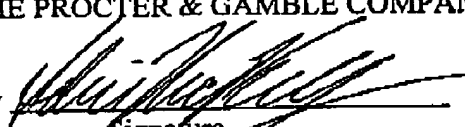
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Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application and allowance of Claims 1 and 3-20.

Respectfully submitted,

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Signature

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